

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
American Mobile)
Telecommunications Association, Inc.'s)
Petition for Rulemaking)
to Expand Geographic Partitioning)
and Spectrum Disaggregation)
Provisions for 900 MHz SMR)
)
and)
)
Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

RM-8887

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OFFICE OF SECRETARY

PR Docket No. 93-144

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To: The Commission

**COMMENTS OF INDUSTRIAL COMMUNICATIONS
& ELECTRONICS, INC.**

Industrial Communications & Electronics, Inc. ("IC&E"), by its attorneys, and in response to the Federal Communications Commission's ("FCC" or "Commission") October 4, 1996 Public Notice ("Notice")¹ respectfully submits its Comments on the American Mobile Telecommunications Association's ("AMTA") Petition for Rulemaking ("Petition") seeking modification of the 900 MHz SMR rules to permit geographic partitioning and spectrum disaggregation of all 900 MHz MTA licenses. IC&E supports the Petition and urges the Commission to proceed expeditiously to modify its rules in conformance with AMTA's proposal.

¹ Public Notice, American Mobile Telecommunications Association, Inc. Files Petition for Rulemaking to Expand Geographic Partitioning and Spectrum Disaggregation Provisions for 900 MHz SMR, RM-8887 (rel. Oct. 4, 1996) ("Notice").

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I. INTRODUCTION

IC&E is a wireless communications provider in a number of different FCC-licensed services, with particular expertise in SMR, cellular and mobile communications operations. The company has been engaged in the mobile telecommunications business for more than fifteen years.

IC&E's SMR activities are focused primarily in the New England and South Florida areas. The company, or its owner Frank DiRico, are incumbent 900 MHz SMR licensees in several Designated Filing Areas ("DFAs"), including Boston, Miami and San Diego. IC&E also was an active participant in the recent 900 MHz SMR auction for geographic-based MTA licenses. It purchased a total of thirteen authorizations in the Boston, Denver and Miami MTAs, for an aggregate auction price of more than Four Million Dollars. Thus, IC&E has a significant interest in the outcome of this proceeding.

II. APPROVAL OF 900 MHz SMR MTA LICENSE PARTITIONING AND DISAGGREGATION WILL ENHANCE COMPETITION AND PROMOTE EFFICIENT USE OF SPECTRUM

The FCC first issued 900 MHz SMR licenses in the late 1980s, but limited such authorizations to primary sites located in specified DFAs. DFAs typically consisted of a small number of counties in the 50 largest urban areas. Thus, the incumbent SMR service has been confined to operations in and around the country's major metropolitan areas.

In late 1995, the Commission adopted rules governing the assignment of 900 MHz SMR spectrum both in areas outside the DFAs and for channels within the DFAs that had not been

constructed by the original, incumbent licensee.² The new regulatory framework provided for the issuance of geographic-based MTA licenses with protection provisions for any primary, co-channel incumbents within the MTA. It also specified that MTA licenses would be awarded pursuant to competitive bidding procedures.

In general, IC&E supports the regulatory and operational flexibility that is associated with geographic-based licensing. Further, it appreciates that there may be administrative efficiencies for the FCC in utilizing a geographic, rather than site-specific, licensing scheme. However, based on its extensive experience in the provision of wireless telecommunications services, the company also recognizes that regulatorily-defined service areas do not necessarily conform precisely to what a particular service provider might consider the optimal market area.

The 900 MHz SMR service traditionally has been used to provide localized dispatch service, in part because previous FCC rules limited primary sites to locations within the DFAs. Some of the existing operators, as well as certain new entrants, may have had market plans that encompass an entire MTA, but others had more limited geographic aspirations. Incumbents that wanted the operational flexibility to expand even modestly beyond their existing DFA boundaries had no choice but to bid for the entire MTA or forego any expansion opportunity. Conversely, new entrants interested in providing service in markets commercially unrelated to the existing DFA, although within the same MTA, were required to compete with DFA incumbents intent on preserving their limited growth potential. Neither party may have had an independent business desire to provide MTA-wide service, but the current process dictates that they conform

² See Second Order on Reconsideration and Seventh Report and Order, PR Docket No. 89-553, 11 FCC Rcd 2639 (1995).

their marketplace objectives to the FCC's requirements. There may have been a natural comity of interest between such applicants, but that comity cannot be reflected under the existing licensing scheme.

In its Petition, AMTA proposed that the FCC adopt 900 MHz SMR rules that would permit any MTA licensee to partition its license geographically along established geopolitical boundaries and/or to disaggregate some portion of its authorized spectrum any time after receiving an authorization. The Petition recommended that an entity acquiring a partitioned area ("Partitionee") or disaggregated spectrum ("Disaggregatee") should be solely responsible for meeting any construction requirements applicable to its geographic area or authorized frequencies. Further, it suggested that a Partitionee or Disaggregatee acquiring its territory or channels from an MTA licensee that had qualified for small or very small business status would assume responsibility for a pro rata portion of any outstanding obligations associated with the MTA license still owed to the Federal Treasury.

AMTA noted that adoption of such rules would have several positive results. It would promote efficient use of this spectrum by allowing it to be utilized by the party most capable of putting it into operation promptly. This is likely to be particularly advantageous for spective rural subscribers who might otherwise face a significant delay before receiving service. It would foster a more competitive marketplace by providing entry opportunities for additional service providers. Among the participants expected to take advantage of this less capital intensive option are the smaller businesses, including those owned by women and minorities, that were discouraged from participating in or unsuccessful in the auction. That result would be consistent

with Congress' directive to the Commission to promote economic opportunities for such entities.³

IC&E supports the Petition fully, and agrees that it should have the salutary effect described by AMTA. For example, upon adoption of such rules, the company anticipates discussing the possible partitioning of the Los Angeles MTA, within which IC&E is an incumbent in San Diego, with both the auction winner and the co-channel incumbent in Los Angeles. It also will reevaluate its MTA authorizations to determine whether it should concentrate its economic investment and marketing efforts on the provision of service in certain portions of the territory and consider assigning the remaining area to an entity with a more localized presence. That option may be particularly attractive in MTAs in which there was no incumbent on the frequencies and, therefore, in which IC&E's initial focus will be on the unserved "major" market area. While it is premature to predict to what extent, if at all, IC&E would avail itself of the option of partitioning or disaggregating its spectrum, it is unquestionable that adoption of such rules would permit the marketplace to dictate how spectrum should be optimally deployed and by whom. This flexibility will be essential if, as proposed, the Commission provides such opportunities for CMRS competitors to 900 MHz SMR such as PCS operators.⁴

³ Telecommunications Act of 1996, Pub. L. No. 104-104 § 101, 110 Stat. 56 (1996).


⁴ Notice of Proposed Rulemaking, WT Docket No. 96-148, 11 FCC Rcd ____ (rel. July 15, 1996).

III. CONCLUSION

For the reasons described herein, IC&E urges the Commission to proceed expeditiously to adopt rules consistent with those proposed in the Petition.

Respectfully submitted,

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Dated: October 21, 1996

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 21st day of October, 1996, mailed a copy of the foregoing Comments to the following:

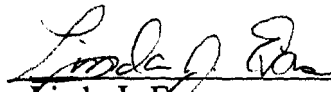
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